

Message Text

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PAGE 01 OECD P 09796 01 OF 02 041530Z
ACTION EUR-12

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LIMITED OFFICIAL USE SECTION 01 OF 02 OECD PARIS 09796

PASS: EB FOR BOEKER AND RYAN; TREASURY FOR GRIFFIN

E.O. 11652: N/A
TAGS: EINV, OECD
SUBJECT: COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES (CIME): MEETING MARCH 31 -
APRIL 1; SUMMARY OF DISCUSSIONS OF BELGIAN REQUEST

REF: (A) IME(77)7; (B) OECD PARIS 9746

1. FOLLOWING IS TEXT OF SUMMARY OF DISCUSSIONS IN CIME
ON BELGIAN NOTE (REFDOC A), AS INDICATED PARA 13, REFTEL
B.

BEGIN TEXT

1. BY A LETTER DATED 18TH MARCH, 1977, TRANSMITTED
THROUGH THE SECRETARY-GENERAL, THE BELGIAN GOVERNMENT
HAS REQUESTED THE COMMITTEE TO HAVE AN EXCHANGE OF VIEWS
ON THIS GOVERNMENT'S INTERPRETATION OF PARAGRAPHS 6 AND
9 OF THE SECTION "EMPLOYMENT AND INDUSTRIAL RELATIONS"
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PAGE 02 OECD P 09796 01 OF 02 041530Z

OF THE GUIDELINES, TOGETHER WITH PARAGRAPHS 7 AND 8 OF
THE GENERAL PART OF SUCH GUIDELINES, UNDER THE TERMS OF
PARAGRAPH 1 OF THE COUNCIL DECISION ON INTER-GOVERNMENTAL
CONSULTATION PROCEDURES CONCERNING THE GUIDELINES.

2. AN EXCHANGE OF VIEWS TOOK PLACE ON 31ST MARCH, DURING
THE 13TH MEETING OF THE COMMITTEE.

3. THE CHAIRMAN INTRODUCED THE DISCUSSION BY RECALLING THE MANDATE OF THE COMMITTEE, AND THE LIMITS WITHIN WHICH ITS ROLE WAS CIRCUMSCRIBED BY THE GUIDELINES THEMSELVES AND BY THE DECISION ON INTER-GOVERNMENTAL PROCEDURES. HE ALSO NOTED THAT THE MEMBERS OF THE COMMITTEE HAD HAD LITTLE TIME TO STUDY A QUESTION WHICH WAS CERTAINLY VERY COMPLEX, AND THEREFORE COMMENTS WOULD HAVE TO BE PRELIMINARY AND TENTATIVE IN NATURE.

4. THE BELGIAN REPRESENTATIVE SET OUT THE GENERAL QUESTIONS RAISED BY THE SPECIFIC INSTANCE MENTIONED IN ANNEX II TO THE BELGIAN MEMORANDUM. THESE GENERAL QUESTIONS WERE SUMMARISED AS FOLLOWS:

IS IT CONSISTENT WITH THE GUIDELINES THAT A 100 PERCENT-OWNED AND FULLY-CONTROLLED SUBSIDIARY OF A FOREIGN COMPANY

- CEASE OPERATIONS WITHOUT HAVING GIVEN TO ITS PERSONNEL THE LEGALLY REQUIRED NOTICE?
- BE UNABLE, FOR LACK OF ASSETS, TO PAY THE SEVERANCE INDEMNITIES WHICH ARE LEGALLY DUE IN SUCH A CASE?

5. THE BELGIAN GOVERNMENT'S VIEW WAS THAT THE PARENT COMPANY MUST ASSIST THE LOCAL ENTITY IN COMPLYING WITH ITS LEGAL OBLIGATIONS, AND THIS VIEW WOULD EQUALLY HOLD IF BOTH THE PARENT AND THE SUBSIDIARY WERE BELGIAN COMPANIES.

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PAGE 03 OECD P 09796 01 OF 02 041530Z

6. THE BELGIAN REPRESENTATIVE APPEALED TO INTERGOVERNMENTAL CO-OPERATION IN ORDER TO HELP FIND A POSITIVE SOLUTION, AND EXPRESSED THE WISH THAT THE ENTERPRISE CONCERNED BY INVITED TO PRESENT ITS VIEWS ON THE APPLICATION OF THE GUIDELINES.

7. THE CHAIRMAN, REFLECTING THE GENERAL VIEW, ASSURED THE BELGIAN REPRESENTATIVE THAT THE COMMITTEE WOULD CONSIDER FURTHER THE QUESTIONS THAT HAD BEEN RAISED WITH A VIEW TO RESPONDING TO BELGIAN PRESENTATION, BUT STRESSED THAT THE COMMITTEE WAS NOT A COURT AND COULD NOT PASS JUDGMENT ON THE CONDUCT OF A PARTICULAR ENTERPRISE. HE DISTINGUISHED TWO ISSUES:

- WHETHER PARAGRAPH 6 OF THE SECTION ON "EMPLOYMENT AND INDUSTRIAL RELATIONS" APPLIES TO THE ENTERPRISE AS A WHOLE;

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PAGE 01 OECD P 09796 02 OF 02 041529Z
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LIMITED OFFICIAL USE SECTION 02 OF 02 OECD PARIS 09796

- TO WHAT EXTENT THE PARENT COMPANY HAS A MORAL
DUTY TO ASSIST THE LOCAL ENTITY IN MEETING
THE OBLIGATIONS OF THE SAME PARAGRAPH 6.

8. IT WAS NOTED THAT THE GUIDELINES ARE ADDRESSED TO
THE VARIOUS ENTITIES WITHIN THE MNE ACCORDING TO THE
ACTUAL DISTRIBUTION OF RESPONSIBILITIES. TO THE EXTENT
THAT THE RESPONSIBILITY FOR CLOSURE OF AN ENTITY UNDER
PARA. 6 OF THE EMPLOYMENT AND INDUSTRIAL RELATIONS SEC-
TION OF THE GUIDELINES RESTS WITH AN ENTITY IN ANOTHER
MEMBER COUNTRY, THE GUIDELINES ARE ADDRESSED TO THAT
ENTITY. THE SCOPE OF RESPONSIBILITY, WITHIN THE FRAME-
WORK OF LAW, REGULATIONS, AND PREVAILING LABOR RELATIONS
AND EMPLOYMENT PRACTICES, IN EACH OF THE COUNTRIES IN
WHICH THEY OPERATE, DESCRIBED IN PARA. 6 IS THAT ENTER-
PRISES SHOULD "PROVIDE REASONABLE NOTICE" AND "MITIGATE
TO THE MAXIMUM EXTENT PRACTICABLE ADVERSE EFFECTS." SOME
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PAGE 02 OECD P 09796 02 OF 02 041529Z

DELEGATIONS ALSO STRESSED THAT THE LEGAL SITUATIONS IN HOST AND HOME COUNTRIES HAVE TO BE TAKEN INTO ACCOUNT IN CONSIDERING THE IMPLICATIONS OF THE GUIDELINES.

9. THE BELGIAN REPRESENTATIVE SAID THAT HE UNDERSTOOD THAT THE SENSE OF THE MEETING WAS THAT A PARENT COMPANY COULD HAVE SOME MORAL RESPONSIBILITY IN SITUATIONS SUCH AS THOSE ENVISAGED BY PARAGRAPH 6 AND THAT THE COMMITTEE WOULD CONTINUE TO REFLECT UPON THE APPLICATION OF THE GUIDELINES, IN THE LIGHT OF THE CASE SUBMITTED BY THE BELGIAN AUTHORITIES.

10. DISCUSSION WAS RESUMED ON THE SPECIFIC PROPOSAL OF THE BELGIAN GOVERNMENT OF INVITING THE ENTERPRISE CONCERNED TO EXPRESS ITS VIEWS CONCERNING THE APPLICATION OF THE GUIDELINES IF IT WISHED. IN THE ABSENCE OF A CONSENSUS, IT WAS DECIDED TO REVERT TO THIS QUESTION AT THE NEXT MEETING. END TEXT
TURNER

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